

CHAPTER 5 ORDERS TO SHOW CAUSE/ LAW & MOTION RULES

Rule 5.5.1

Form of Papers Presented for Filing

All papers presented for filing must comply with the California Rules of Court, rule 2.100 et. seq. and rule 3.10. After the initial filing, all pleadings must bear the case number and the name of the judicial officer to whom the case has been assigned. The date, time, and department where the matter is to be heard must also be designated on the first page beneath the case number and nature of the paper. All OSCs and/or motions must indicate a time estimate immediately beneath the case number on the first page of the pleading.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.2

Exhibits Lodgments and Highlighting

Exhibits filed or lodged by Petitioner/Plaintiff must be numbered consecutively for each hearing beginning with Number 1. Exhibits filed or lodged by Respondent/Defendant must be lettered consecutively for each hearing beginning with Letter A. The evidentiary foundation for the exhibits must be set forth in the appropriate declarations filed with the court. A notice of lodgment listing the documents must be filed and served on all parties, and a copy must be submitted with the lodged material. Documents lodged with the court must be tabbed and highlighted as required by the California Rules of Court to correlate to the notice of lodgment. Each document, particularly deposition testimony, must be marked in a manner that calls attention to the relevant portion(s) of the document or testimony. Exhibits accompanying a Motion or Order to Show Cause which exceeds 10 pages must be lodged rather than filed with the court. The provisions of the California Rules of Court, rules 3.116 and 3.1302 apply.

Lodged documents will be stamped "received" by the court. Following the return of the lodged documents by the court, the party lodging them must retain them until the applicable appeal period has expired. Due to limitations of storage space, counsel may not lodge exhibits more than 10 court days prior to the hearing except by court order. The party or his/her counsel must retrieve all lodged documents from the courtroom within five court days following the hearing or they may be discarded without further notice. (Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.3

Time for Service and Filing of Papers

Absent an order shortening time, all moving, opposing, and reply papers, as well as Orders to Show Cause, must be filed and served in compliance with Code of Civil Procedure section 1005, subdivision (b).

If an FCS appointment has been set, all papers for the mediator's review must be served in compliance with local rule 5.10.2.D.

Supplemental declarations to inform the court of new or different facts must be filed and personally served by either party up to five court days before the hearing. Responses to supplemental declarations must be filed and personally served before 10:00 a.m. two court days before the hearing. No reply declarations are permitted except as follows: If a party personally serves supplemental declarations at least 10 court days before the hearing, then responses to the supplemental declarations must be filed and personally served at least five court days before the hearing. Replies to responding declarations must be filed and personally served by 10:00 a.m. two court days before the hearing. The court may decline to consider any supplemental declarations which are not timely served or do not appear to be the result of newly discovered evidence or facts which were not available when the original pleadings were filed, or where the supplemental pleadings were filed late to gain a tactical advantage.

In cases where a temporary restraining order or a protective order has been issued under either Family Code sections 240, 2040 (children, property and insurance), 4620 (disposable property), 6320 (Domestic Violence Prevention Act), or 7710 (Uniform Parentage Act), filing and service of the moving and supporting papers must be in compliance with Family Code sections 242 and 243.

If a party objects to a pleading as not being timely served, the court may, in its discretion, refuse to consider the pleading or, for good cause shown, continue the hearing.

Post-judgment motions must be served pursuant to Family Code section 215. Service of post-judgment motions on the responding party's attorney is insufficient.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. & Renum. 1/1/2008)

Rule 5.5.4

Family Court Services Initial Screening Form

When filing an OSC regarding custody or visitation, the moving party must file a Family Court Services Screening Form (SDSC FCS-046).

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.5

Income and Expense Declarations

A current Income and Expense Declaration with verification of income pursuant to Local Rule 5.6.3 must be filed and served with the moving papers for any hearing involving financial issues, such as support, attorney fees and costs. Failure to comply with this rule may subject the party and/or his/her attorney to sanctions pursuant to Code of Civil Procedure section 575.2.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.6

Companion Matters

A party may file a companion matter only if reasonably related to the issues raised by the original OSC or motion. The companion matter must be filed and personally served by 10:00 a.m. five court days before the hearing. A response to a companion matter must be filed and personally served by 10:00 a.m. two court days before the hearing. No written replies are permitted.

Ex parte leave of court must be obtained prior to filing a companion matter to a hearing that has been specially set by the court.

Requests for attorney fees and standard restraining orders may be addressed in the responsive declaration without filing a companion matter. The same is true for affirmative relief regarding modification of support, custody, or visitation when the moving papers seek modification of support, custody, or visitation.

Absent prior court order, an Order to Show Cause re Contempt may not be filed as a companion matter and must be heard on a date before any other pending motions involving the same or similar subject matter. However, a request to determine arrears and/or for attorney fees and costs may be filed as a companion matter to an Order to Show Cause re Contempt for Failure to Pay Support.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. & Renum. 1/1/2008)

Rule 5.5.7

Reissuing Orders to Show Cause

Except as provided to the contrary in Family Code section 3062, OSCs not timely served may be "reissued" by the clerk, provided the original matter was filed less than 30 days before re-issuance is requested and the applicant files a completed form, "Application and Order for Reissuance of Order To Show Cause" (FL-306). A reissuance filed more than 30 days after the original filing requires a judicial officer's signature.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.8

Hearings On Orders to Show Cause and Noticed Motions

A. Calendaring. The Business Office will assign hearing dates on all OSCs and motions. Hearing dates are not available by telephone. The business office will advise as to the approximate setting dates. In addition, the court's website provides a ten-week calendar for domestic cases to assist counsel in selecting a date. Preferred dates and times for hearings may be indicated to the business office on the messenger slip or by other writing addressed to the clerk, such as a post-it note attached to the front page of the OSC. Absent good cause, hearings will proceed on the date set.

1. Motions to set support, or other motions in which the date of filing determines retroactivity, may be filed without setting a hearing date. The pleading must plainly state "NO HEARING DATE REQUESTED" just below the hearing date line. The motion must then be filed *sine die* (without a specific date). A copy of all pleadings nonetheless must be served promptly on the opposing counsel/party. The moving party must submit the following to set a hearing date in the ordinary course within 180 days of the original filing:

a. A new motion/OSC form as previously filed, but without the request for no hearing date.

b. A conformed copy of the first page of the originally filed motion/OSC.

c. Any new or additional affidavits or exhibits supporting the motion/OSC.

d. A proof of service showing the opposing party was properly served with the original motion/OSC as set forth above.

If the hearing is not set in the ordinary course 180 or fewer days after the original filing, the motion/OSC is off calendar. The court will not approve an order shortening time. If the moving party fails to provide a proof of service showing prompt notice to the opposing party following the original filing (no more than 15 days), the motion/OSC is off calendar. In both instances, the court loses the authority to award retroactive support.

2. At the time a hearing date is requested, the originally-filing party may separately file other and further motions/OSC's to be heard at the same date and time.

3. The opposing party may file a separate motion/OSC to determine support at any time.

B. Time Estimates. All OSCs and/or motions must indicate a time estimate immediately beneath the case number on the first page of the pleading. Short cause OSC matters are those which take no more than 20 minutes of court time. Long cause OSC matters are those which take more than 20 minutes but less than 40 minutes. Matters which require more than 40 minutes must be specially set by the court.

C. Continuances. Stipulated continuances of noticed motions or OSC's except contempt and domestic violence matters may be granted by telephone until 3:30 p.m. two court days before the scheduled hearing. The stipulated continuance may be made to any available court date and time as requested by counsel. Telephone requests for stipulated continuances should be directed to the calendar clerk for the department. The court may also grant stipulated continuances at the time of the calendar call. Nevertheless, if counsel has a good faith belief the hearing will not be heard on the merits at the scheduled date, a "Don't Read" notice should be provided in the same manner as a stipulated continuance. In all other instances, counsel and the parties should appear ready to proceed with the hearing.

Only the Court may issue the TRO or continue the hearing on a domestic violence restraining order. TRO's will not remain in effect during the continuance, absent a stipulation or court order. The moving party must obtain a "Reissue Temporary Restraining Order" (Form DV-125 and EA-125) from the Court and submit the order to the Sheriff's Office.

Continuances of OSC's re contempt must be requested in open court, with the citee present, or obtained by written stipulation including a signed consent by the citee to the continuance and a waiver of time to hear the contempt. The stipulation must be filed with the court at or before the time set for the original hearing. If the citee does not appear, upon request, a bench warrant will normally be issued and held until the new date to retain jurisdiction.

If custody or visitation is at issue and the FCS or private mediator's report is not available at least ten days before the hearing, the court will normally grant a continuance upon request of a party who has not had ten days to review the report.

Counsel must contact the court at least two court days before any scheduled hearing if the matter will not go forward for any reason in order to prevent an unnecessary review of the file.

D. Calendar Calls. The court will attempt to accommodate counsels' calendar conflicts upon reasonable request. Requests for calendar priority should be made at the calendar call. Counsel unable to appear at the calendar call must give notice of that fact to opposing counsel at the earliest reasonable time. The court must consider sanctioning offending counsel for failure to comply with this rule.

E. Manner of Presentation. Counsel should meet and confer before presentation of the case to determine which issues are settled, which issues are to be presented to the court as contested, and the total time estimate for their presentation. Counsel must present OSC's and motions in the following order:

1. Announce appearance;

2. Give the court an accurate time estimate for the presentation of the entire matter.

Failure to do so may result in the hearing being interrupted, continued, or ultimately concluded at the end of the calendar.

3. Clearly state ALL contested issues;

4. Recite any stipulated matters for the approval of opposing counsel, the parties and the

Court; and

5. Briefly present argument on each contested issue including a recommended resolution.

Counsel may not interrupt the opposing side's presentation, other than with valid evidentiary objections and must direct all remarks to the court. Once the court has rendered its decision, counsel must not attempt to reargue the case. It is, however, acceptable to inquire of the Court in order to clarify a ruling or correct a mistake.

F. Chambers Conferences. Chambers conferences may be held at the discretion of the judicial officer. The purpose of a chambers conference is solely to discuss matters with the court which should not be set forth on the record in open court.

G. Stipulation Forms. Long and short stipulation forms are available in all Family Law departments. The court encourages the use of these forms in lieu of oral stipulations. After the form is completed, counsel should give the form to the clerk for immediate filing and distribution. Use of the stipulation forms will eliminate the need for the filing of a subsequent order. If counsel desires, however, a typed formal order may be prepared and filed after filing the stipulation form.

H. Limitations on Evidence/Oral Testimony. It is the general policy of this court to consider only the papers filed with the court when granting or denying applications for orders. Factual arguments must be limited to evidence, and/or reasonable inferences drawn therefrom, which are contained in declarations filed with the court and signed under penalty of perjury. The court has discretion to elicit additional information from the parties and/or counsel. Oral testimony will generally not be received. If any party wishes to present oral testimony, written declarations must still be filed in a timely manner. Written notice of the intent to present oral testimony must be served on the opposing party at least five court days before the scheduled hearing. The notice must state the name[s] of the intended witness[es] and the subject matter of the witness[es]' testimony.

The written declarations must be the direct testimony of the declarant. Oral testimony must be limited to hostile third party witnesses or cross-examination on the contents of the written declarations and/or reasonable inferences drawn therefrom. Oral testimony may also include re-direct and rebuttal, if necessary. If the intended oral testimony will be cross-examination of the opposing party, a third party who submitted a written declaration on behalf of the opposing party, or a court-appointed expert witness, the party who wishes to conduct the cross-examination must set forth in a written declaration the reasons for requesting cross-examination, and that declaration must accompany the notice of intent to present oral testimony.

Failure to give the required notice will generally result in a denial of the request for oral testimony. Even if such notice is given, the taking of oral testimony is solely at the discretion of the court.

I. Awards of Attorneys' Fees and Costs. If attorneys' fees and costs are awarded on a monthly installment basis, acceleration provisions upon default will apply such that if any two payments are missed, the entire balance will immediately accelerate and become all due and payable.

J. Extra Copies of Pleadings. Counsel must bring an extra set of all relevant pleadings to the hearing. Due to last-minute filings and the volume of business, it is not uncommon for the court file to be incomplete.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008; Rev. 1/1/2009)